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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,035	08/04/2006	Werner Boltshauser	37960-000111/US	5534

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EXAMINER
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NGUYEN, JIMMY T

ART UNIT	PAPER NUMBER
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3725

MAIL DATE	DELIVERY MODE
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08/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,035	<b>Applicant(s)</b> BOLTSHAUSER, WERNER	
	<b>Examiner</b> JIMMY T. NGUYEN	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25-27, 29-31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-16, 18-23, 25-27, 30, 31 and 33 is/are rejected.
- 7) ☒ Claim(s) 13, 17 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on April 28, 2008 has been entered and considered and an action on the merits follows.

### ***Drawings***

The proposed drawing correction filed on April 28, 2008 has been acknowledged and approved. The drawing correction sufficiently overcomes the drawing objections noted in the previous Office action.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4, 7-12, 14-15, 18-20, 27, 30-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3,337,944) in view of Büdenbender (hereinafter “Bud”) (US 5,186,592) and Saurin et al. (hereinafter “Saurin”) (US 4,315,132).**

Regarding claims 1-3, 9-12, 14-15, 18, 20, 27-28, and 30-33, Morris discloses a device and a production of a can body comprising: forming metal strip (20) to a tube (fig. 1), welding a longitudinal seam in between lateral edges of the tube shaped metal strip (see character (40)

Art Unit: 3725

in fig. 1), the longitudinal seam is welded on a flat pressed tube of the tube (fig. 1), the metal strip (20) is moved in its longitudinal direction through a forming device (38, 39) and is passed next to a welding device (40, 41), severing tube sections of the tube (at reference (50) in fig. 1), forming the sections into can shells (55) having a circular cylindrical cross-section (fig. 1). Morris does not disclose each of the can shells is forming with a cross sectional restriction and a bottom or top closure member is attached to the respective restriction by laser welding a circumferential seam. However, Bud disclose a can shell (1) is forming with a cross sectional shoulder-shaped restriction (5) at either faces of the shell (fig. 1) and a bottom or top closure member (3) (col. 3, lines 58-59) is attached to the respective restriction by laser welding (9), and an outer marginal region (fig. 1) of bottom or top closure member is adapted to the shape of the respective restriction (fig. 1), wherein the face side of the bottom or the top and the face side of the can shell at the bottom or the top are on opposite sides of the can body, one inside and one outside of the can (fig. 1). At a face side of the can shell, an annular buckle (5) is formed radially outwards (i.e. outward toward the inside of the can shell). A base covering (see portion (4')) is fixed in such a manner the connection (9) of the can shell to the can bottom is covered by it. Bud teaches the forming of the restriction is to reduce any crevice or residual space between the bottom closure member and the can shell for preventing corrosion and trapping residue (col. 3, lines 28-34). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form a cross section restriction at either faces of each of the can shells of Morris and to attach a bottom or top closure member to the restriction by laser welding as taught by Bud, in order to provide a bottom closure to the can shell and to reduce any crevice or residual space

between the bottom closure member and the can shell for preventing corrosion and trapping residue. As to the longitudinal seam is welded by laser, the patent to Saurin teaches that it is old and well known in the can manufacturing art to weld a longitudinal seam of a tube (fig. 7) by laser (48). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to weld the lateral edges of the tube of Morris by a laser, as taught by Saurin, since such welding method is old and well known in the can manufacturing art, in order to form a tube. Note that the Applicant has not disclosed that welding by laser solves any stated problem or is for any particular purpose (see page 24, lines 4-7).

Regarding claim 4, Morris discloses cutting a metal strip into sections (fig. 5, see pre-cut lines on the metal strip), forming the sections into a closed flat pressed shape by means of forming mold and tools (figs. 8-10) with the sections in series (fig. 5), welding joining of the sections (at (40)), severing tube sections (50), and forming the sections to can shells (54).

Regarding claims 7, 8, and 19, Morris discloses the cutting procedure is carried out with cutting edge (figs. 17, 18), the cutting edge being moved together with the tube (fig. 17) and being reset after having severed a tube section (see up and down arrows on the cutting blade (78) in fig. 17). Incisions (24) are formed (fig. 17) and the cutting procedure being carried out in the flat regions between the incisions (fig. 17).

**Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3,337,944), Büdenbender (hereinafter “Bud”) (US 5,186,592), and Saurin et al. (hereinafter “Saurin”) (US 4,315,132), in further view of Cornelius (US 3,526,186).**

Morris, as modified by Bud and Saurin, discloses the invention substantially as claimed as set forth above except for a film strip. However, the patent to Cornelius, in a can making art, discloses a film strip (13) is applied to a metal strip (10) in order to serve as an efficient aid in drawing of the metal strip (col. 2, lines 13-15). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the metal strip of Morris, with a film strip as taught by Cornelius, in order to provide an efficient aid in drawing of the metal strip.

**Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3,337,944), Büdenbender (hereinafter “Bud”) (US 5,186,592), and Saurin et al. (hereinafter “Saurin”) (US 4,315,132), in further view of Radtke (US 6,389,866).**

Morris, as modified by Bud and Saurin, discloses the invention substantially as claimed as set forth above except for a valve on the upper closure member. However, the patent to Radtke, in a can forming art, teaches a valve (col. 2, line 33) is provided on an upper closure member (10) in order to form an aerosol can. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the upper closure member Morris, with a valve, as taught by Radtke, in order to form an aerosol can. As to the valve is being laser welded to the can shell, it would have been an obvious matter of design choice to weld by laser, since applicant has not disclosed that welding by laser solves any

stated problem or is for any particular purpose and it appears that the invention would perform equally well with the attaching method as disclosed by Radtke.

**Claims 21, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Büdenbender (hereinafter “Bud”) (US 5,186,592) in view of Morris (US 3,337,944), and Saurin et al. (hereinafter “Saurin”) (US 4,315,132).**

Bud discloses a can body with restrictions and upper and bottom closure members as claimed as set forth above. Bud discloses the can shell (1), but Bud does not expressly disclose how the can shell is formed. However, the patent to Morris, in a can forming art, can be applied to teach that it is old and well known to form a can shell by longitudinal seaming lateral edges of a metal strip by welding. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the can shell of Bud, by longitudinal seaming lateral edges of a metal strip by welding, as taught by Morris, since such process is old and well known in the can forming art for forming a can shell. As to the longitudinal seam is welded by laser, the patent to Saurin teaches that it is old and well known in the can manufacturing art to weld a longitudinal seam of a tube (fig. 7) by laser (48). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to weld the lateral edges of the tube of Bud by a laser, as taught by Saurin, since such welding method is old and well known in the can manufacturing art, in order to form a tube. Note that the Applicant has not disclosed that welding by laser solves any stated problem or is for any particular purpose (see page 24, lines 4-7).

**Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bündenbender (hereinafter “Bud”) (US 5,186,592), in further view of Radtke (US 6,389,866).**

Bud discloses a can body with a restriction and an upper closure member as claimed as set forth above except for a valve. However, the patent to Radtke, in a can forming art, teaches a valve (col. 2, line 33) is provided on an upper closure member (10) in order to form an aerosol can. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the upper closure member Bud, with a valve, as taught by Radtke, in order to form an aerosol can.

#### *Allowable Subject Matter*

Claims 13, 17 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

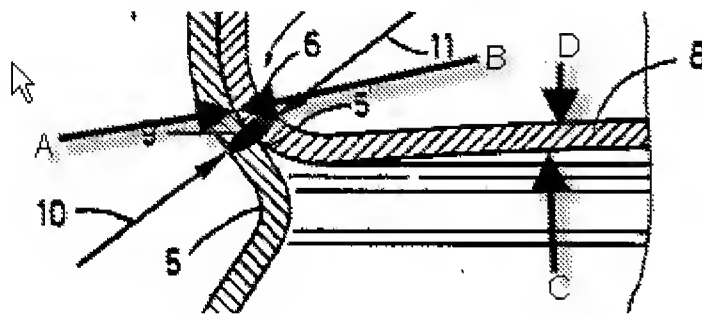
Applicant's arguments filed April 28, 2008 have been fully considered but they are not persuasive.

Applicant argued that Budenbener does not disclose, "and for attaching the bottom to the can shell, the face side of the bottom and the face side of the can shell at the bottom are on opposite sides of the can body, one inside and one outside of the can" because there is no suggestion of edges (face sides) on opposite sides of the can body, one inside and one outside of



Art Unit: 3725

the can. With respect to Applicant's assertions, this argument has been considered. However, the claims do not define that the face sides as the edges as defined in the Applicant's remark and the claims do not define the limitation, "one" as being the face side. The Examiner broadly interpreted the claimed language as follows, "the face side of the bottom (see (A) in the illustration below) and the face side of the can shell at the bottom (see (B) in the illustration below) are on opposite sides of the can body (the can body having two sides, one side as shown in the drawing and the other opposite side should be on the other part of the can body that is cut off from the drawing), one (see (C) in the illustration below) inside and one (see (D) in the illustration below) outside of the can". Note that the claims must more specific on defining the face sides and the recitation, "one", in order to overcome this reference.



Applicant further argued that Morris fails to disclose the seam is welded when the tube is flat, this argument has been considered. However, the claim does not define the degree of the term "flat", and since the tube as disclosed by Morris is welded when it is in oval-like cross section or not completely flat (fig. 1), Morris does disclose the seam is welded when the tube is flat. The Examiner defines the term "flat" as being non-cylindrical shape. Morris discloses the tube, when welded, is in an oval shape or not completely flat (fig. 1). Therefore, tube is still considered as being flattened.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JIMMY T. NGUYEN whose telephone number is (571)272-4520. The examiner can normally be reached on Monday-Thursday 7:30am-5:00pm with alternating Fri. 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272- 4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3725

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTNguyen  
August 02, 2008

/JIMMY T NGUYEN/  
Primary Examiner  
Art Unit 3725